STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

In the matter of XO Illinois, Inc. Petition for Arbitration pursuant to Section 252 (b) of the Telecommunications Act of 1996 to establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois	))))))))	Docket No. 01- 0466

AMERITECH ILLINOIS= RESPONSE TO XO'S PETITION FOR ARBITRATION

Dennis G. Friedman
Mayer, Brown & Platt
190 S. LaSalle Street
Chicago, Illinois 60603
(312) 701-7319

Nancy J. Hertel
Ameritech Illinois
225 W. Randolph St.
Chicago, Illinois 60606
(312) 727-4517

Illinois Bell Telephone Company ("Ameritech Illinois"), pursuant to section 252(b)(3) of the Telecommunications Act of 1996 ("1996 Act" or "Act"), hereby responds to XO Illinois, Inc.'s ("XO") Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Illinois ("Petition").

I. SCOPE OF THIS ARBITRATION

XO's Petition asserts there is just one issue in dispute, namely, whether "XO is entitled to opt into the Focal-Illinois Agreement, including the entirety of the intercarrier compensation provisions of that agreement." (Petition at 7.) As XO's subsequently filed testimony makes clear, however, that is not the only issue presented by XO: XO is also proposing reciprocal compensation language for the parties' interconnection agreement, and is advocating that language *not* on the ground that XO is entitled to opt into it (XO concedes it is not), but on the ground that the language reflects the applicable law.

XO concedes it cannot opt into the ISP intercarrier compensation provisions of the Focal-Ameritech Illinois interconnection agreement (the "Focal Agreement"). (Verified Statement of Douglas W. Kinkoph at 3, lines 21-24.) XO has no alternative but to concede that, because the FCC has ruled that "carriers may no longer invoke section 252(i) to opt into an existing interconnection agreement with regard to the rates paid for exchange of ISP-bound traffic." Order on Remand and Report and Order (FCC 01-131), *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-bound Traffic*, CC Dockets No. 96-98 and 99-68 (rel. April 27, 2001) ("*ISP Compensation Remand Order*"), at ¶ 82.

To fill the gap, XO proposes reciprocal compensation language for the parties' agreement. As Mr. Kinkoph explains (Verified Statement at 5, lines 14-20):

> XO cannot opt into the ISP reciprocal compensation portion of the Focal agreement. Therefore, XO has proposed language that would remain in effect until such time as Ameritech has notified XO of its intent to implement the "mirroring rule" set forth in paragraph 89 of the FCC [*ISP Compensation Remand* Order]. That language is similar to language in the Focal agreement. A copy of XO's proposed language was attached to XO's petition as Appendix E.

Plainly, then, XO is not asking the Commission only to determine the extent to which section 252(i) of the 1996 Act does or does not entitle XO to opt into the reciprocal compensation provisions of the Focal Agreement. Rather, XO is asking the Commission to approve *on its merits* the language attached to XO's Petition as Appendix E. Ameritech Illinois opposes XO's language, and urges the Commission instead to approve Ameritech Illinois' proposed language that addresses the same subject matter.

XO's proposed language, as it appears in Appendix E to XO's Petition, is as follows, with boldface numbers inserted for later reference:

> 4.7 Compensation for the transport and termination of Local Traffic and IntraLATA Toll Traffic shall be pursuant to this Section 4.7. **[1]** The Reciprocal Compensation arrangements set forth in this Section 4.7 are not applicable to (i) Exchange Access traffic, (ii) traffic terminated to Requesting Carrier using Ameritech's unbundled switching and for which the Requesting Carrier incurs no incremental cost to terminate traffic, (iii) traffic originated by one Party on a number ported to its network that terminates to another number ported on that same Party's network or (iv) any other type of traffic found to be exempt from Reciprocal Compensation by the FCC or the Commission. **[2]** All Exchange Access traffic and IntraLATA Toll Traffic shall continue to be governed by the terms and conditions of applicable federal and state tariffs. **[3]** Compensation for traffic that is delivered through Transit Service shall be pursuant to Section 7.2.
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> 4.7.1 **[4]** Reciprocal Compensation applies for transport and termination of Local Traffic billable by Ameritech or Requesting Carrier which a Telephone Exchange Service Customer originates on Ameritech's or Requesting Carrier's physical switch for termination on the other Party's physical switch. **[5]** The originating Party shall compensate the terminating Party for the transport and termination of Local Traffic for the function(s) provided by that terminating Party at the rate(s) provided at Item II of the Pricing Schedule (i.e. End Office Local Termination, Tandem Switching, Tandem Transport Termination, and Tandem Transport Mileage). **[6]** The Parties' obligation to pay Reciprocal Compensation to each other shall commence on the date the Parties agree that

the network is complete (i.e., each Party has established its originating trunks as well as any ancillary functions (e.g., 9-1-1)) and capable of fully supporting originating and terminating Customer (and not a Party's test) traffic.

4.7.2 **[7]** Each Party shall charge the other Party its effective applicable federal and state tariffed intraLATA FGD switched access rates for those functions a Party performs relating to the transport and termination of IntraLATA Toll Traffic.

4.7.3 **[8]** Compensation for transport and termination of all traffic which has been subject to performance of INP by one Party for the other Party pursuant to Article XIII shall be as specified in Section 13.7.

Thus, XO is proposing language that would **[1]** identify categories of traffic to which reciprocal compensation does not apply; **[2]** provide for intercarrier compensation for two of those categories (Exchange Access traffic and IntraLATA Toll Traffic); **[3]** address compensation for transit traffic; **[4]** define the traffic to which reciprocal compensation would apply; **[5]** specify the rate elements constituting reciprocal compensation; **[6]** state when the parties' mutual obligation to pay reciprocal compensation shall commence; **[7]** specify (by reference) the rates the parties would pay each other for transport and termination of IntraLATA Toll Traffic; and **[8]** address compensation for transport and termination of traffic which has been subject to interim number portability.

Ameritech Illinois' competing language on these matters appears in the Appendix Reciprocal Compensation submitted herewith. Ameritech Illinois will demonstrate in this proceeding, by means of its testimony and briefs, why its Appendix Reciprocal Compensation is superior to XO's proposed sections 4.7, 4.7.1, 4.7.2 and 4.7.3 in all respects. Most important, however, is the difference between the rates at which Ameritech Illinois and XO are proposing the parties compensate each other for call termination.

The parties apparently agree that Ameritech Illinois may elect to exchange traffic – both traffic that is subject to reciprocal compensation under section 251(b)(5) of the 1996 Act

("251(b)(5)") traffic and ISP-bound traffic – at the capped rates set forth in the *ISP Compensation Remand Order*.[1] Also, both parties' proposals agree that until such time (if any) as Ameritech Illinois makes that election, whatever rates the parties pay each other for terminating 251(b)(5) traffic will also apply to ISP-bound traffic that the parties exchange. The parties disagree, however, on what those rates should be. This is the central issue in this arbitration, and we return to it in Section III below.

II. UNAVAILABILITY OF FOCAL RECIPROCAL COMPENSATION PROVISIONS UNDER SECTION 252(I) IN LIGHT OF UNAVAILABILITY OF ISP COMPENSATION PROVISIONS

As the preceding section demonstrates, this docket presents the Commission with important questions in addition to what the Petition mistakenly states is the only issue in the case. That issue, again, is whether the fact that XO cannot have the ISP intercarrier compensation provisions of the Focal Agreement means that XO also cannot have any other intercarrier compensation provisions of the Focal Agreement because all the intercarrier compensation provisions are legitimately related. We have shown that that is not by any means the only issue, because XO has proposed four paragraphs of reciprocal compensation language; Ameritech Illinois has proposed competing language; and the Commission is thus called upon to determine, on the merits and without regard to anyone's views on how section 252(i) operates, what language should be included in the parties' agreement.

Indeed, the issue that the Petition mistakenly calls the only issue – what provisions in the Focal Agreement are not available to XO under section 252(i) – may not need to be addressed at all. Ameritech Illinois believes that its entire Appendix Reciprocal Compensation is, fairly read,

[1] The *ISP Compensation Remand Order* (¶ 78) permits Ameritech Illinois to elect to exchange ISP-bound traffic at specified capped rates, but only if it offers to exchange all 251(b)(5) traffic at the same rates (*id*. ¶ 89). If Ameritech Illinois does not elect the FCC caps, it must then exchange ISP-bound traffic at state-approved or state-arbitrated reciprocal compensation rates. (*Id*.)

a counter to XO's proposed sections 4.7, 4.7.1, 4.7.2 and 4.7.3. If that is correct, then there is no issue whatsoever in this proceeding concerning how section 252(i) operates: The Commission would consider XO's proposed sections 4.7, 4.7.1, 4.7.2 and 4.7.3 in their entirety and Ameritech Illinois' proposed Appendix Reciprocal Compensation in its entirety, and would decide, on the merits, that the parties' agreement should include one or the other or, possibly, a variation of one or the other that complies with the 1996 Act and all applicable FCC Regulations.

It is indisputable that some sections of the Appendix Reciprocal Compensation are counters to language that XO has proposed, and are for that reason properly before the Commission. The Commission may conclude, however, that other sections of the appendix are properly before it only if, as Ameritech Illinois maintains, XO cannot opt into any intercarrier compensation provisions in the Focal Agreement because it cannot opt into the ISP compensation provisions. We illustrate the point with two examples:

At one extreme, section 5.0 of Ameritech Illinois' Appendix Reciprocal Compensation is indisputably a counter to language that XO is proposing on its merits, and is therefore indisputably a proper subject for Commission consideration. XO is proposing, in its section 4.7.1, a rate structure to govern the compensation the parties will pay each other for terminating 251(b)(5) traffic and, therefore, ISP-bound traffic. In opposition to XO's proposal, Ameritech Illinois proposes section 5.0 of the Appendix Reciprocal Compensation, which sets forth a different approach to that rate structure. There can be no question, then, but that the Commission must decide in this proceeding between XO's rate proposal and Ameritech Illinois' rate proposal.

At the other extreme is the matter of intercarrier compensation for transit traffic. XO's proposed language addresses that subject (in sentence **[3]** quoted above) by stating that

"Compensation for traffic that is delivered through Transit Service shall be pursuant to Section 7.2." Ameritech Illinois believes that XO's proposed sentence puts into play the question of compensation for transit traffic, and that section 7.0 of the Appendix Reciprocal Compensation ("Transit Traffic Compensation") is therefore properly before the Commission. Ameritech Illinois also believes that XO cannot, in any event, opt into the provisions of the Focal Agreement that address intercarrier compensation for transit traffic (identified in XO's language as Section 7.2; should actually be 7.3), because those provisions are legitimately related to other intercarrier compensation provisions in the Focal Agreement that are unavailable to XO. That last contention – if the Commission reaches it[2] – does raise the question of the extent to which the unavailability of the Focal ISP compensation provisions renders other intercarrier compensation provisions in the Focal Agreement also unavailable. Thus, it is possible (though by no means certain) that the Commission will need to address the question that XO mistakenly calls the only question in this proceeding.[3]

If the Commission does reach that question, it should resolve it in favor of Ameritech Illinois. A requesting carrier that opts into an interconnection, an unbundled network element or a service under section 252(i) must take all "terms and conditions" that are "legitimately related"

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[2] The Commission will not reach the contention if it agrees with Ameritech Illinois that XO's proposed sentence **[3]** puts the question of intercarrier compensation on transit traffic into play.

[3] If this proceeding really did turn on the interpretation of section 252(i), as XO contends, the proceeding would have to be dismissed. XO initiated this proceeding as an arbitration under section 252(b) of the 1996 Act. In such a proceeding, the Commission has jurisdiction only to resolve disagreements about the incumbent carrier's duties under section 251 of the Act. This is because the subject matter of the arbitration is "open issues" (*see* section 252(b)(1)) arising out of the parties' negotiations under section 252(a), and the subject matter of those negotiations, in turn, is "the particular terms and conditions of agreements to fulfill the duties described in" section 251. (*See* section 251(c)(1).) The incumbent's duties under section 251 are many, and the scope of arbitrable issues is therefore extensive. But the incumbent's obligations under section 252(i) are separate from and in addition to its duties under section 251, and the interpretation of the 252(i) obligations is not within the scope of the arbitrator's jurisdiction under section 252(b). This is not to say that the Commission does not have authority to interpret and enforce section 252(i). It clearly does. But not in an arbitration under section 252(b). Thus, again, this section 252(b) proceeding would be subject to dismissal if it were true that the only issue it presents is, as XO contends, the interpretation and application of section 252(i).

to that interconnection, unbundled network element or service. First Report and Order (FCC 96-325), *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Dockets No. 96-98 and 95-185 (rel. Aug. 8, 1996), at ¶ 1315. Here, XO cannot opt into the ISP compensation provisions of the Focal Agreement. Consequently, XO cannot, by operation of law, opt into provisions of the Focal Agreement that are "legitimately related" to those ISP compensation provisions. The question then becomes, which provisions are legitimately related.

To the extent it appears necessary in light of subsequent developments (*see, e.g., supra* n.2), Ameritech Illinois will demonstrate that the various sections of its proposed Appendix Reciprocal Compensation displace language in the Focal Agreement that is, indeed, legitimately related to the ISP compensation provisions in that agreement. Merely by way of example:

- Section 5.5 of Appendix Reciprocal Compensation provides:

  > All ISP- and Internet-bound traffic shall be subject to the same terms and conditions regarding switch recordings, Calling Party Number (CPN) signaling, and other usage detail as other Local Calls under this Appendix. Minutes of use to ISPs may be shown separately on the monthly usage detail, invoices, payment summaries, or other documents exchanged between ILEC and CLEC in the monthly billing cycle.

  With intercarrier compensation for ISP-bound traffic mirroring reciprocal compensation for 251(b)(5) traffic, as the FCC requires, the parties must provide for CPN call signaling and its use in jurisdictionalizing ISP traffic.

- The parties also need a "default" parameter to address circumstances where CPN is not transmitted with the call. Section 4.4 of Appendix Reciprocal Compensation does so in an eminently reasonable manner. It provides:

  > Where SS7 connections exist, calls originated by one party and terminated by the other, if the percentage of calls passed with CPN is greater than ninety percent (90%), all calls exchanged without CPN information will be billed as either Local Traffic or intraLATA Toll Traffic in direct proportion to the minutes of use (MOU) of calls exchanged with CPN information. If the percentage of calls passed with CPN is less than ninety percent (90%), all calls passed without CPN will be billed as intraLATA switched access.

- Similarly, the appendix appropriate extends the CPN requirement to ISP-bound traffic that transits the Ameritech Illinois tandem. In this situation, the third party, and not Ameritech Illinois as the provider of transiting service, is responsible for the payment of call termination charges. Section 4.5 of the appendix appropriately addresses this situation by providing that in the context of transiting, the lack of CPN cannot be used as a rationale for shifting intercarrier compensation responsibility to the transiting provider:

  > Where the Parties are performing a transiting function as defined in Section 7.0 below, the transiting Party will pass the original and true CPN if it is received from the originating third party. If the original and true CPN is not received from the originating third party, the Party performing the transiting function cannot forward the CPN and will not be billed as the default originator.

Ameritech Illinois has no reason to believe at this time that XO particularly objects to these provisions, or to many others in Appendix Reciprocal Compensation. Thus, it may be that if the Commission resolves the central issue in this arbitration in Ameritech Illinois' favor – by approving Ameritech Illinois' proposal concerning intercarrier compensation rates for 251(b)(5) traffic and ISP-bound traffic – XO would be indifferent to (or even in favor of) the inclusion of these provisions in the parties' agreement.

III. INTRODUCTION TO THE PARTIES' COMPETING RATE PROPOSALS FOR INTERCARRIER COMPENSATION

This section focuses on the central issue in this arbitration: the rates at which the parties will compensate each other for call termination during the period between the Effective Date of the agreement they are arbitrating and the date (if any) on which Ameritech Illinois elects the FCC caps.[4]

XO's proposal, embedded in sentence **[5]** of the XO language quoted above, is that the parties compensate each other for call termination at the currently prevailing Illinois rates that appear, for example, in the Focal Agreement. Ameritech Illinois' proposal, set forth in section 5.0 of the Appendix Reciprocal Compensation, is that the parties instead compensate

[4] The rates in question would also continue to apply to non-ISP traffic exchanged by the parties if Ameritech Illinois were to elect the FCC caps on ISP-bound traffic by offering to exchange all traffic at those rates and if XO were to decline Ameritech Illinois' offer.

each other for call termination at *bifurcated* rates that – unlike XO's proposed rates – properly take into account the unique cost characteristics of both *call set-up* and *call duration*, and that therefore more accurately reflect, in conformity with section 252(d)(2) of the 1996 Act, the actual costs that the carrier being compensated incurs for transporting and terminating individual calls.[5]

We will demonstrate in this proceeding that Ameritech Illinois' proposal is more economically rational than XO's, and truer to the cost-based pricing requirement of section 252(d)(2), because it more accurately reflects, for each call to which reciprocal compensation rates pertain, the costs incurred by the carrier to which compensation is paid. In summary form:

Under the reciprocal compensation rate structure that is currently in place in Illinois, and that XO advocates, Ameritech Illinois charges a CLEC either the "tandem serving rate" or the "end office serving rate" when Ameritech Illinois terminates a call that originates on the CLEC's network. The end office serving rate applies when the CLEC delivers the call to the Ameritech Illinois end office that serves the called party. This rate consists of a single element: a per/minute end office switching rate that, in theory, compensates Ameritech Illinois for the costs it incurs when it switches the call at its end office onto the called party's loop.

The tandem serving rate applies when the CLEC delivers the call to an Ameritech Illinois tandem switch. In that scenario, Ameritech Illinois switches the call at the tandem; transports the call from the tandem to the end office switch that serves the called party; and then switches the call at the end office onto the called party's loop. The tandem serving rate, again theoretically to

[5] Section 252(d)(2) requires that reciprocal compensation rates allow each carrier to recover the costs associated with the transport and termination on its network of calls that originate on the other carrier's network, based on a reasonable approximation of the additional costs of terminating such calls.

compensate Ameritech Illinois for the costs it incurs to perform these multiple functions, is the sum of the same per/minute end office switching element identified in the preceding paragraph; plus a per/minute tandem switching element; plus a per/minute tandem transport element[6].

For traffic that moves in the opposite direction – *i.e.*, calls that originate on Ameritech Illinois' network and that are terminated on the CLEC's network – the CLEC charges reciprocal compensation at rates that mirror Ameritech Illinois' rates.

Current reciprocal compensation rates in Illinois, while theoretically designed to compensate Ameritech Illinois and interconnected CLECs for the costs they incur to transport and terminate calls, were calculated by means of a method (described below) that *averaged* the duration of all calls to which reciprocal compensation applied. As a result, the reciprocal compensation charge for any *individual* call may be imprecise. This has always been true. At the time when the averaging was performed, however (*i.e.*, when the current rates were calculated), reciprocal compensation charges *in the aggregate* were not significantly imprecise, because the average call duration that was used was a true average of the universe of calls as it then existed.

Subsequently, however, there have been dramatic changes in call durations for certain categories of calls – changes that this Commission has explicitly recognized. As a result, continued use of current reciprocal compensation rates – based as they are on an average call duration that does not fit the profile of the traffic on today's local exchange network – yields the following consequences: First, the intercarrier compensation charge for any individual call is more apt than before to be imprecise, and by a wider margin. Second, the charges assessed by (or paid by) any individual carrier *in the aggregate* are now – unlike before – almost certain to

[6] The tandem transport element is the sum of two sub-elements: tandem transport termination and tandem transport facility mileage, which is a per/minute per/mile figure.

deviate – dramatically for some carriers – from actual termination costs. Thus, adoption of XO's proposed language for section 4.7 would likely result in significant over-compensation or under-compensation of one party or the other, in violation of section 252(d)(2) of the 1996 Act.

Ameritech Illinois proposes to eliminate this problem by *de-averaging* reciprocal compensation rates, so that the rate charged for each call will be based on that call's duration, and will therefore accurately reflect the compensated party's termination costs. We explain Ameritech Illinois' proposal below, but first describe more specifically the averaging method on which the current rate structure is based:

- Current reciprocal compensation switching rates are per minute rates that assume an average call duration of approximately 3 ½ minutes.

- Those rates were arrived at by melding two cost streams: (1) set-up costs, which are incurred one time per call and do not vary with the duration of the call; and (2) time-sensitive costs that are incurred over the entire duration of the call.

- Since set-up costs are incurred one time per call, they were melded into the current per minute reciprocal compensation switching rates by being spread over the 3 ½ minute average duration. Thus, for example, if the fixed per call set-up cost were 10¢, then approximately 2.85¢ of that 10¢ (*i.e.*, 10¢ ÷ 3.5) would be assigned to each minute, so that, on average, the full 10¢ set up cost would be recovered on each call. (The 10¢ figure is hypothetical, and is used to simplify the illustration.)

- An ever-growing category of calls that is subject to reciprocal compensation rates, namely, ISP-bound calls, averages between seven and eight times as long as the average call that was used to calculate the current rates – approximately 26 minutes. Indeed, the tremendous volume and long duration of ISP-bound calls has nearly doubled the average duration of all calls that are subject to reciprocal compensation rates.

- Consequently, when current reciprocal compensation switching rates are applied to ISP-bound calls, the compensation paid on the average ISP call recovers between seven and eight times the set-up costs that it should recover. (Using the numbers in the example above, a 26-minute call would recover 26 x 2.85¢ = 74.1¢ in set-up costs, even though the call actually cost only 10¢ (like all calls) to set up).

- While ISP-bound traffic is the most dramatic example, the point applies generally to all traffic that is subject to reciprocal compensation rates: The current rate

structure yields non-cost-based compensation for an enormous percentage of individual calls, because it overcompensates for long calls (by overcharging for set-up costs) and undercompensates for short calls (by undercharging for set-up costs).

- For example, business calls and wireless calls are typically shorter than other calls, while calls on chat lines and corporate network dial-in lines are typically longer than other calls. The current rate structure is economically inefficient in that it tends to encourage carriers to develop business plans (*i.e.*, to target particular categories of customers and/or to design service offerings) solely in order to take advantage of the arbitrage opportunity presented by rates that fail to take call duration into account. The Commission should eliminate this arbitrage opportunity, and the socially undesirable economic inefficiency it introduces, by adopting Ameritech Illinois' proposed rate structure.

The Commission Staff has agreed with the core of the foregoing analysis. In Docket No. 00-0027, Staff's witness testified:

> Although the reciprocal compensation rate . . . is a per minute charge, it is actually comprised of a set-up cost and a duration cost. The set-up costs are those costs that are incurred on a per call basis and are not sensitive to minutes of use. Duration costs, on the other hand, are those costs that depend on the length of the call. Since the set-up costs are one-time costs and are generally greater than the duration costs, Ameritech has melded the set-up costs into a per-minute rate based on the average duration of a local call (3.3 minutes) and combined that cost with the duration costs to arrive at a composite per-minute reciprocal compensation rate. Therefore, when Ameritech pays reciprocal compensation rates on ISP traffic, which have an average duration of 26 minutes, it is paying the set-up cost more than seven times over. Thus, Ameritech is overcompensating . . . for the cost of an ISP call when using the currently structured reciprocal compensation rate.

(Verified Statement of Patrick L. Phipps (Staff Ex. 2.0) (Feb. 28, 2000) Docket No. 00-0027, at 15-16.)

In its post-hearing brief in that docket, Staff sought "the implementation of all of [Mr. Phipps'] recommendations," including "his recommendation that Focal receive a reciprocal compensation rate that has been adjusted to reflect [] longer holding times." (Initial Brief of the Staff of the Illinois Commerce Commission (March 27, 2000) Docket No. 00-0027, at 5-6.) In

doing so, Staff relied on Mr. Phipps' testimony concerning call duration, which Staff noted "appears to be uncontroverted." (*Id*. at 12.)

> In its final order in 00-0027, the Commission agreed that the evidence suggested
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> dramatic shifts in the utilization of the local exchange network, associated with the explosion of Internet traffic, and the resultant effects these changes are having upon the issue of reciprocal compensation. Due to these changes, the issue of reciprocal compensation demands further scrutiny by this Commission in order to ensure that just and reasonable rates are in place in Illinois.

Arbitration Decision, Docket No. 00-0027 (May 8, 2000), at 12.[7]

Section 5.0 of the proposed Appendix Reciprocal Compensation attacks head on, and solves, precisely the over-compensation problem recognized by Staff and the Commission in Docket 00-0027 – and, as discussed in the next section, it does so without asking the Commission to tread on the turf that the FCC reserved to itself in the *ISP Compensation Remand Order*. More, it addresses exactly the same over-compensation problem as it pertains to *all* longer than average calls to which reciprocal compensation rates apply, not just ISP-bound calls. And, at the same time, it addresses the parallel problem of undercompensation on all shorter than average calls to which reciprocal compensation rates apply. Specifically, Ameritech Illinois proposes the following language for section 5.0 of the Appendix Reciprocal Compensation:

> 5.2 Bifurcated Rates (Call Set Up and Call Duration). The Parties will compensate each other for the termination of Local Calls and Local ISP Calls on a "bifurcated" basis, meaning assessing an initial Call Set Up charge on a per Message basis, and then assessing a separate Call Duration charge on a per Minute of Use (MOU) basis, wherever per Message charges are applicable. The following rate elements apply, with the corresponding rates shown in section 5.7 below:
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> 5.3 Tandem Serving Rate Elements:

[7] The Commission thereafter opened a docket to investigate the question of intercarrier compensation on ISP-bound traffic (Docket No. 00-0555), but it appears the Commission will close that docket without addressing the question, on the ground that the *ISP Compensation Remand Order* precludes the Commission from regulating rates for ISP-bound traffic.

5.3.1 Tandem Switching - compensation for the use of tandem switching (only) functions. It consists of a call set-up (per message) charge and a call duration (per minute) charge.

5.3.2 Tandem Transport - compensation for the transmission facilities between the local tandem and the end offices subtending that tandem.

5.3.3 End Office Switching in a Tandem Serving Arrangement - compensation for the local end office switching and line termination functions necessary to complete the transmission in a tandem-served arrangement. It consists of a call set-up (per message) charge and a call duration (per minute) charge.

5.4 End Office Serving Rate Elements:

5.4.1 End Office Switching - compensation for the local end office switching and line termination functions necessary to complete the transmission in an end office serving arrangement. It consists of a call set-up (per message) charge and a call duration (per minute) charge.

The proposal is self-explanatory: It would have the parties compensate each other for the termination of both 251(b)(5) calls and ISP-bound calls at bifurcated rates, consisting of a call set-up charge and a call duration charge. The elements comprising those charges – the tandem serving rate elements in 5.3 and the end office rate element in 5.4 – remain exactly as they are today, but the switching elements (tandem and end office) now consist of a call set-up component and a call duration component. The detail is shown in section 5.7, which provides:

5.7 The following rates apply for the termination of Local and ISP-bound traffic between ILEC and CLEC. The underlying Agreement contains other compensation rates, including for Transit Traffic:

End Office Local Termination		
	Set up charge, per call	$0.009512
	Duration charge, per MOU	$0.000967
Tandem Switching		
	Set up charge, per call	$0.000496
	Duration charge, per MOU	$0.000927
Tandem Transport Termination		$0.000201
Tandem Transport Facility per MOU, per Mile		$0.000013

The per/minute rates in section 5.7 are based on exactly the same TELRIC costs as Ameritech Illinois' current, Commission-approved reciprocal compensation rates. In other words, Ameritech Illinois is not proposing any adjustment to the TELRICs that underlie the rates; all that is new is the break-down of the switching rate elements into the one-time call set-up component and the per/minute call duration component.

Ameritech Illinois' proposal aligns reciprocal compensation rates with costs more precisely than does XO's proposal. The Commission should therefore approve Ameritech Illinois' proposal, both because it is economically superior and because it better accords with the cost-based pricing standard for reciprocal compensation in section 252(d)(2) of the 1996 Act. XO itself asserts in its Petition (at ¶ 17), "The Commission should make an affirmative finding that the rates . . . it prescribes in this arbitration proceeding are consistent with the Requirements of Section[] . . . 252(d) of the Act." Ameritech Illinois wholeheartedly agrees, and urges the Commission to approve its bifurcated rate structure on that ground.

IV. THE COMMISSION'S JURISCTION TO ARBITRATE RECIPROCAL COMPENSATION RATES IN THIS PROCEEDING

XO may protest that Ameritech Illinois' proposal is yet another attempt to resolve the problem of intercarrier compensation on ISP-bound calls, and that the FCC's *ISP Compensation Remand Order* prohibits the Commission from regulating the rates for such calls. Any such argument fails. Ameritech Illinois is not asking the Commission to decide anything about ISP-bound calls. Rather, Ameritech Illinois is asking the Commission to adjust the rate structure for reciprocal compensation *on 251(b)(5) calls* including, first and foremost, regular local voice calls. Obviously, the Commission has authority to do that.

As it happens, the state of the law is such that whatever rates the Commission establishes for 251(b)(5) calls will also apply to ISP-bound calls (except in the scenario identified above in

footnote 4). But that is because the FCC has so ruled, not because of any decision that this Commission will be making about ISP-bound calls.

It makes all the sense in the world for the Commission to rationalize reciprocal compensation in Illinois by requiring the termination paid on each call to be based on the duration of that individual call. To be sure, intercarrier compensation rates for ISP-bound traffic may be rationalized along with reciprocal compensation rates for 251(b)(5) calls – in a manner that precisely accords with Staff's recommendation to the Commission in Docket 00-0027 – but that by-product will be by operation of the FCC's *ISP Compensation Remand Order*, not by any improper exercise of jurisdiction over ISP-bound traffic.

V. ATTACHED PROPOSED INTERCONNECTION AGREEMENT

Ameritech Illinois submits herewith the interconnection agreement that it advocates in this proceeding. The agreement consists of several parts:

A. <u>The "main" agreement, in redlined form</u>. This is the Focal Agreement that XO seeks to adopt, but with modifications reflecting Ameritech Illinois' positions in this proceeding. *Italicized language* in the redline is language that Ameritech Illinois maintains should be included in the parties' agreement and that XO opposes. ~~Language shown with strikethrough~~ in the redline is language that XO maintains should be included in the parties' agreement and that Ameritech Illinois opposes. Plain text language in the redline is language that the parties have agreed will be included in their agreement. Thus, the "main" agreement that Ameritech Illinois advocates consists of the plain text and italicized language in the redline, and excludes the stricken through language.

Of the language in the "main" agreement that is italicized or underscored, there is some that is not actually in dispute, but that reflects only the tailoring of the underlying Focal Agreement to XO. This includes, for example, the name of the carrier on the title page. Because

XO has not formally signed off on these changes, they are shown in redline form. The only provisions in the main agreement that show redlining that Ameritech Illinois believes reflect disputed language are sections 4.7, 4.7.1 (and its footnote), 4.7.2 and 4.7.3.

B. Ameritech Illinois' proposed Appendix Reciprocal Compensation. Ameritech Illinois has offered the Appendix Reciprocal Compensation to XO, and XO has rejected it.[8] For ease of reading, Ameritech Illinois has not italicized the entire appendix, but instead presents the whole in plain text.

C. Appendices DA, DSL, Merger Conditions, OS, Physical Collocation, and Virtual Collocation, and Amendment to Ameritech Illinois/Nextlink Illinois Agreement. There is no disagreement about these appendices.

Ameritech Illinois urges the Commission to direct the parties to enter into an interconnection agreement consisting of the Ameritech Illinois version of the "main" agreement, the Appendix Reciprocal Compensation, and the appendices identified in item C above.

V. IDENTIFICATION OF ADDITIONAL ISSUES S ET FORTH FOR ARBITRATION

Ameritech Illinois believes that XO's Petition, including XO's proposed sections 4.7, 4.7.1, 4.7.2 and 4.7.3, places in issue all matters that the Commission needs to decide in order to direct the parties to enter into the interconnection agreement that Ameritech Illinois advocates. To avoid any possible uncertainty on that score, however, Ameritech Illinois hereby sets forth for arbitration, pursuant to sections 252(b)(3) and 252(b)(4)(A) of the 1996 Act, the following issue[9]:

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[8] The form of the Appendix Reciprocal Compensation that Ameritech Illinois submits herewith is different in some respects from the form of the appendix that Ameritech Illinois previously offered XO. Substantively, however, there is no difference. In particular, XO has rejected the concept of bifurcated rates that Ameritech Illinois proposes.

[9] Section 252(b)(3) authorizes the filing of this Response, and section 252(b)(4)(A) makes clear that the Response may set forth issues for arbitration in addition to those set forth in the Petition.

Whether the parties' interconnection agreement should include Ameritech Illinois' proposed Appendix Reciprocal Compensation.

To the extent the Commission may deem it necessary, this issue may be regarded as comprising the following sub-issues, each of which Ameritech Illinois sets forth for arbitration:

Whether the parties' interconnection agreement should include section 1.0 of Ameritech Illinois' proposed Appendix Reciprocal Compensation, concerning the scope and term of that appendix.

Whether the parties' interconnection agreement should include section 3.0 of Ameritech Illinois' proposed Appendix Reciprocal Compensation, concerning classification of traffic.

Whether the parties' interconnection agreement should include section 4.0 of Ameritech Illinois' proposed Appendix Reciprocal Compensation, concerning responsibilities of the parties.

Whether the parties' interconnection agreement should include section 5.0 of Ameritech Illinois' proposed Appendix Reciprocal Compensation, concerning local call termination.

Whether the parties' interconnection agreement should include section 6.0 of Ameritech Illinois' proposed Appendix Reciprocal Compensation, concerning non-local call termination.

Whether the parties' interconnection agreement should include section 7.0 of Ameritech Illinois' proposed Appendix Reciprocal Compensation, concerning transit traffic compensation.

Whether the parties' interconnection agreement should include section 10.0 of Ameritech Illinois' proposed Appendix Reciprocal Compensation, concerning intraLATA toll traffic compensation.

Whether the parties' interconnection agreement should include section 12.0 of Ameritech Illinois' proposed Appendix Reciprocal Compensation, concerning non-waiver and Amendment to the Act rights.

Whether the parties' interconnection agreement should include section 13.0 of Ameritech Illinois' proposed Appendix Reciprocal Compensation, concerning reservation of rights.

Whether the parties' interconnection agreement should include section 14.0 of Ameritech Illinois' proposed Appendix Reciprocal Compensation, concerning entire agreement.[10]

Again, Ameritech Illinois does not believe that these issues go beyond what XO has already put before the Commission by means of its Petition, and sets them forth here only out of an abundance of caution.

CONCLUSION

For the reasons set forth above, and as further elaborated and supported in this proceeding, Ameritech Illinois respectfully urges the Commission to rule in its favor and to approve Ameritech Illinois' proposed interconnection agreement.

Dated: July 20, 2001

Respectfully submitted,

AMERITECH ILLINOIS

By: _____
Nancy J. Hertel
Ameritech Illinois
225 W. Randolph St.
Chicago, Illinois 60606
(312) 727-4517

Dennis G. Friedman
Mayer, Brown & Platt
190 S. LaSalle Street
Chicago, Illinois 60603
(312) 701-7319

[10] Ameritech Illinois sets forth no separate issue concerning section 2.0, 8.0, 9.0 or 11.0 of the appendix, because they are not substantive.